



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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Secretary of Natural Resources

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## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Smithfield Farmland Corp. VPDES Permit No. VAR05 Storm Water Registration No. VAR050348**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §62.1-44.15 between the State Water Control Board and Smithfield Farmland Corp., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10.
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “Facility” means Smithfield Packing Company – North Complex, a meat processing and packing facility located at 601 North Church Street, Smithfield, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
11. “Permit” means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009 and which expired on June 30, 2014 and which was reissued on July 1, 2014. Smithfield Farmland Corp. has applied for registration under the Permit and was issued Registration No. VAR050348.
12. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or

discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

14. “Regulation” means “The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity,” 9 VAC 25-151-10, *et seq.*
15. “Smithfield” means Smithfield Farmland Corp., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Smithfield is a “person” within the meaning of Va. Code § 62.1-44.3.
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
19. “Va. Code” means the Code of Virginia (1950), as amended.
20. “VAC” means Virginia Administrative Code.
21. “VPDES” means Virginia Pollutant Discharge Elimination System.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Smithfield owns and operates the Facility, a meat processing and packaging facility located at 601 North Church Street in Smithfield, Virginia.
2. The Permit allows Smithfield to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of the Pagan River.
3. The Pagan River is located in the James River Basin. The Pagan River (Middle) is listed in DEQ’s 305(b) report as impaired for aquatic life based on the failure to meet the dissolved oxygen criteria, fish consumption based on PCBs in fish tissue and shellfish consumption based on the failure to meet the fecal coliform criteria. The potential sources for the impairments include atmospheric deposition of Nitrogen, industrial point source discharges, internal nutrient recycling, loss of riparian habitat, municipal point source discharges and wet weather discharges.

4. On February 12, 2014, Smithfield reported to DEQ that on February 11, 2014, due to a temporary blockage of an underground wastewater line, approximately 3,750 gallons of process wastewater from the Facility overflowed through a wastewater manhole into a storm water drain and discharged to state waters.
5. On February 19, 2014, Smithfield reported to DEQ that on February 19, 2014, due to a temporary blockage of an underground wastewater line, approximately 15,300 gallons of process wastewater from the Facility overflowed through a wastewater manhole into a storm water drain and discharged to state waters.
6. Part II.F of the Permit, 9 VAC 25-31-50 and Va. Code §62.1-44.5 prohibit unpermitted discharges to state waters.
7. On March 31, 2014, TRO issued NOV No. W2014-03-T-003 for the violations noted in paragraphs C(4) through C(6), above.
8. On April 30, 2014, Smithfield met with DEQ-TRO to discuss the NOV and presented corrective actions that had been implemented including the hiring of an independent contractor to perform pressure cleaning of the process wastewater lines, back flushing of the process wastewater lines, inspection of the process wastewater lines using camera technology, adding process wastewater lines to the schedule for regular pressure washing, installation of fixed drain baskets, staging of a portable pump in case of overflows, addition of video surveillance of the area surrounding the manhole that overflowed, installation of secondary containment around the area the manhole overflowed and training of personnel on new equipment and procedures.
9. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
10. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
12. The Department has not issued coverage under permits or certificates to Smithfield other than under VPDES General Permit No. VAR05.
13. The Pagan River is a surface water located wholly within the Commonwealth and is a ‘state water’ under State Water Control Law.
14. Based on the information provided by Smithfield and the meeting on April 30, 2014, the Board concludes that Smithfield has violated Part II.F of the Permit, as

well as the Va. Code and the Regulation, as described in paragraphs C(4) through C(6), above.

15. Smithfield has submitted documentation that the violations as described in paragraphs C(4) through C(6), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Smithfield, and Smithfield agrees to pay a civil charge of \$12,640.42 within 30 days of the effective date of this Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and shall be delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Smithfield shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Smithfield shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Smithfield, for good cause shown by Smithfield, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, Smithfield admits the jurisdictional allegations, findings of fact and conclusions of law contained herein.

4. Smithfield consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Smithfield declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Smithfield to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Smithfield shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstance beyond its control and not due to a lack of good faith or diligence on its part. Smithfield shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Smithfield shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Smithfield intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Smithfield. Nevertheless, Smithfield agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Smithfield has completed all of the requirements of the Order;
  - b. Smithfield petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Smithfield.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Smithfield from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Smithfield and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Smithfield certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Smithfield to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Smithfield.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Smithfield voluntarily agrees to the issuance of this Order.

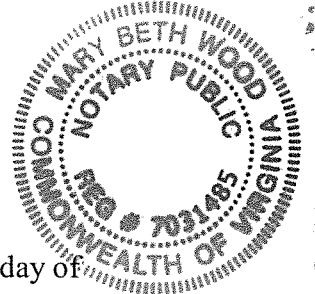
And it is so ORDERED this 20 day of November,  
2014.

Maria R. Soll  
Regional Director  
Department of Environmental Quality

Smithfield Farmland Corp. voluntarily agrees to the issuance of this Order.

Date: 9-16-14 By: George Enderlin, General Manager  
(Person) (Title)  
Smithfield Farmland Corp.

Commonwealth of Virginia  
~~City~~ County of Isle of Wight



The foregoing document was signed and acknowledged before me this 16<sup>th</sup> day of September, 2014, by George Enderlin who is  
General Manager of Smithfield Farmland Corp., on behalf of the company.

Mary Beth Wood  
Notary Public

7031485

Registration No.

My commission expires: 5/31/2018

Notary seal: